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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,751	12/21/2001	Joel P. Dunsmore	10004016-1	3808

7590 02/24/2005
AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

EXAMINER

BHAT, ADITYA S

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

HA

Office Action Summary	Application No.		Applicant(s)	
	10/027,751		DUNSMORE ET AL.	
	Examiner		Art Unit	
	Aditya S. Bhat		2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-26 is/are allowed.
- 6) ☒ Claim(s) 1,2,27 and 29 is/are rejected.
- 7) ☒ Claim(s) 3-15,28 and 30-32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 27 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by McCallister (USPN 6,507,628)

With regards to claim 1, McCallister (USPN 6,507,628) teaches a method of extending dynamic range of a test, system that has a receiver channel comprising:

compensating for an effect that compression of the receiver channel has on as magnitude response and a phase response of the receiver channel. (Col. 9, lines 53-55)
(see abstract)

With regards to claim 27, McCallister (USPN 6,507,628) teaches test system having extended dynamic range comprising:

a receiver channel; (Col. 2, lines 35-36)

a controller that processes magnitude data and phase data generated by the receiver channel; (68,80; see figure 3) and

a computer program stored in memory, the computer program being executed by the controller, the computer program implementing instructions that compensate for an

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effect on the generated data caused by the receiver channel being compressed. (Col. 9, lines 17-18)

Although, the McCallister (USPN 6,507,628) does not appear to directly state the computer program implementing instructions that compensate for an effect on the generated data caused by the receiver channel being compressed. It does teach programming and does teach compensating for an effect on the generated data caused by the receiver channel being compressed. It would be inherent to this hardware system to use some sort of computer software in order to compensate for an effect on the generated data caused by the receiver channel being compressed. (Col. 9, lines 53-55) (see abstract)

With regards to claim 2 and 29, McCallister (USPN 6,507,628) teaches compensating comprises correcting data measured for one of a device under test and a signal under test using the test system. (Col. 9, lines 53-55) (see abstract)

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: Claims 3-15, 28 and 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 16:

The primary reason for the allowance of claim 16 is the inclusion of the method steps of: characterizing a second receiver channel of the test system for a second magnitude compression response and a second phase compression response. It is this

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feature found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

Claims 17-26 are allowed due to their dependency on claim 16.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments with respect to claims 1-2, 27 and 29 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments, the recitation "a method of extending dynamic range of a test, system that has a receiver channel comprising" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951)

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kromer (USPN 4,601,044) teaches a carrier –phase adjustment using absolute phase detector, and McCallister (USPN 6,005,897) teaches a data communication system and method therefor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aditya S Bhat whose telephone number is 703-308-0332. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 703-308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-5841 for regular communications and 703-308-5841 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Aditya Bhat
August 20, 2004


John Barlow
Supervisory Patent Examiner
Technology Center 2800